

EXHIBIT A

Alexander, Andrew

From: Simmons, Joshua L. <joshua.simmons@kirkland.com>
Sent: Monday, May 10, 2021 9:30 AM
To: Alexander, Andrew
Cc: Ilardi, Chris T.; #Hayden-TakeTwo; Hayden-TakeTwo; mcavanagh@mcdonaldhopkins.com; McMullen, Dan; Cipolla, John; Pinter, Kimberly
Subject: RE: Hayden v. Take-Two--Updated Financials and Discovery Responses for Defendants

Dear Andy,

We have considered Mr. Hayden's belated proposal to extend the expert report and related deadlines, but we do not think it is reasonable given that he could have raised these issues when we were working out a schedule in April. Moreover, the dates that you have proposed do not work for us given that we have multiple trials in September and October. There is plenty of time before expert reports are due for the experts to consider any supplemental financial information.

Josh

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From: Alexander, Andrew <AAlexander@Calfee.com>
Sent: Friday, May 7, 2021 11:25 AM
To: Simmons, Joshua L. <joshua.simmons@kirkland.com>
Cc: Ilardi, Chris T. <chris.ilardi@kirkland.com>; #Hayden-TakeTwo <HaydenTakeTwo@kirkland.com>; Hayden-TakeTwo <Hayden-TakeTwo@Calfee.com>; mcavanagh@mcdonaldhopkins.com; McMullen, Dan <dmcmullen@calfee.com>; Cipolla, John <JCipolla@Calfee.com>; Pinter, Kimberly <kpinter@calfee.com>
Subject: RE: Hayden v. Take-Two--Updated Financials and Discovery Responses for Defendants

Josh,

Mr. Hayden isn't requesting "additional fact discovery." Again (as we presume you know), Rule 26 *requires* Defendants to supplement their discovery (whether the fact discovery deadline has passed or not). Mr. Hayden's expert requires additional time because (1) he is missing over two years of sales data, which he will presumably only have a chance to review with two weeks remaining before the opening report deadline, and (2) Defendants' supplement should not be limited only to sales data. Please confirm that Defendants will be supplementing all interrogatory responses that should be supplemented.

We plan to move to extend the expert discovery schedule by 30 days (opening reports: June 28; rebuttal reports: August 2; expert discovery cut-off: September 27). We don't see anything in the Court's order that indicates it "purposefully set" the settlement conference for after expert discovery, but if you will agree to the 30-day expert discovery extensions, we will agree to move the settlement conference by 30 days as well (October 12).

Please let us know by the end of the day whether Defendants agree to these schedule changes and will join the motion.

Regards,

Andy

Andrew W. Alexander

Attorney at Law

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From: Simmons, Joshua L. <joshua.simmons@kirkland.com>

Sent: Thursday, May 6, 2021 6:32 PM

To: Alexander, Andrew <AAlexander@Calfee.com>

Cc: Ilardi, Chris T. <chris.ilardi@kirkland.com>; #Hayden-TakeTwo <HaydenTakeTwo@kirkland.com>; Hayden-TakeTwo <Hayden-TakeTwo@Calfee.com>; mcavanagh@mcdonaldhopkins.com; McMullen, Dan <dmcmullen@calfee.com>; Cipolla, John <JCipolla@Calfee.com>; Pinter, Kimberly <kpinter@calfee.com>

Subject: RE: Hayden v. Take-Two--Updated Financials and Discovery Responses for Defendants

Dear Andy,

Mr. Hayden's request is surprising because the parties have been discussing expert discovery since April 2, and yet, Mr. Hayden never raised an interest in additional fact discovery (long after the fact discovery deadline) until last week. Moreover, it is inexplicable that simple updating Take-Two's financial information would require 30 additional days. In any case, we can now confirm that Take-Two will be providing a supplement, which should be able to occur next week.

In terms of the proposed extension, to evaluate your proposal, we would need to understand what dates Mr. Hayden specifically is proposing, including whether he plans to seek new dates for rebuttal reports, the close of expert discovery, and the settlement conference (which the Court purposefully set for after expert discovery).

Josh

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From: Alexander, Andrew <AAlexander@Calfee.com>

Sent: Thursday, May 6, 2021 6:20 PM

To: Simmons, Joshua L. <joshua.simmons@kirkland.com>

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Subject: RE: Hayden v. Take-Two--Updated Financials and Discovery Responses for Defendants

Josh,

Defendants shouldn't be surprised by Mr. Hayden's request, given Defendants' insistence on prioritizing expert discovery and the fact that Defendants haven't supplemented their discovery in over a year. Defendants, in fact, have not produced sales data for the last two years for any accused game. The request is only "out-of-the-blue" in the sense that Mr. Hayden had to remind Defendants about *their* Rule 26 obligation to supplement its discovery "in a timely manner" after a year of silence.

In any event, Mr. Hayden's damages expert will need at least an additional 30 days to prepare an expert report, especially since Defendants are still "considering" whether they will provide up-to-date financials. This information is necessary, and there are only three weeks before opening reports are due. In addition, it has been over a year since Defendants have supplemented *any* of their interrogatories, many of which are relevant to expert discovery (see, e.g., Interrogatory Nos. 4, 5, 6, 11, 14, 16, (to Take-Two); 3, 16, 18 (to 2K Games)). Please confirm that Defendants will promptly do so or confirm that it has nothing to supplement. And please let us know by the end of the day tomorrow if Defendants plan to oppose Mr. Hayden's motion for a 30-day extension for expert discovery.

In addition, a copy of NBA 2K21 is responsive to RFP No. 1. Please let us know if Defendants are refusing to produce a copy—it is important for evidentiary purposes to have a production copy.

Regards,

Andy

Andrew W. Alexander

Attorney at Law

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216.622.8634 **Phone**

From: Simmons, Joshua L. <joshua.simmons@kirkland.com>

Sent: Thursday, May 6, 2021 12:29 PM

To: Alexander, Andrew <AAlexander@Calfee.com>

Cc: Ilardi, Chris T. <chris.ilardi@kirkland.com>; #Hayden-TakeTwo <HaydenTakeTwo@kirkland.com>; Hayden-TakeTwo <Hayden-TakeTwo@Calfee.com>; mcavanagh@mcdonaldhopkins.com; McMullen, Dan <dmcmullen@calfee.com>; Cipolla, John <JCipolla@Calfee.com>; Pinter, Kimberly <kpinter@calfee.com>

Subject: RE: Hayden v. Take-Two--Updated Financials and Discovery Responses for Defendants

Dear Andy,

We are considering your out-of-the-blue request from less than a week ago, including the request that you made for the first time for financial information for *NBA 2K21*. At the moment, I do expect that Take-Two will be able to provide updated financial information, and I will let you know once we confirm. In terms of a copy of NBA 2K21, I am sure that you can order a copy for yourself from any retailer.

In terms of Mr. Hayden's interest in an extension, can you please provide the basis for Mr. Hayden requiring another 30 days for his expert reports to reflect updated financial information?

Josh

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From: Alexander, Andrew <AAlexander@Calfee.com>
Sent: Thursday, May 6, 2021 11:52 AM
To: Simmons, Joshua L. <joshua.simmons@kirkland.com>
Cc: Ilardi, Chris T. <chris.ilardi@kirkland.com>; #Hayden-TakeTwo <HaydenTakeTwo@kirkland.com>; Hayden-TakeTwo <Hayden-TakeTwo@Calfee.com>; mcavanagh@mcdonaldhopkins.com; McMullen, Dan <dmcmullen@calfee.com>; Cipolla, John <JCipolla@Calfee.com>; Pinter, Kimberly <kpinter@calfee.com>
Subject: RE: Hayden v. Take-Two--Updated Financials and Discovery Responses for Defendants

Josh,

Because we are only three weeks out from the deadline for opening expert reports and we have still not received any updated financials (or other discovery) or even an indication that Defendants will in fact be supplementing its discovery, we will be asking the Court for a 30-day extension for the expert discovery deadlines. Please let us know if Defendants will oppose.

Regards,

Andy

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From: Alexander, Andrew
Sent: Friday, April 30, 2021 1:28 PM
To: Simmons, Joshua L. <joshua.simmons@kirkland.com>
Cc: Ilardi, Chris T. <chris.ilardi@kirkland.com>; #Hayden-TakeTwo <HaydenTakeTwo@kirkland.com>; Hayden-TakeTwo <Hayden-TakeTwo@Calfee.com>; mcavanagh@mcdonaldhopkins.com; McMullen, Dan <dmcmullen@calfee.com>; Cipolla, John <JCipolla@Calfee.com>; Pinter, Kimberly <kpinter@calfee.com>
Subject: Hayden v. Take-Two--Updated Financials and Discovery Responses for Defendants

Josh,

As you likely saw, the Court set deadlines for expert discovery. Accordingly, please promptly update Defendants' interrogatory responses as necessary and produce up-to-date financial information for Defendants. Defendants have not

provided updated interrogatory responses for about one year and this information is necessary for expert discovery. In addition, as Mr. Hayden stated in his first supplemental response to Interrogatory No. 15, he is also accusing NBA 2K21 of infringement, so please provide financial information for and a sample copy of NBA 2K21, as well.

Regards,

Andy

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